

2010 ADA Regulations: Reasonable Modifications and Service Animals



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Reasonable Modifications

§ 35.130(b)(7)

A public entity shall make reasonable modifications in policies, practices, or procedures when necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

Fundamental Alteration

An entity is not required to provide an auxiliary aid or service if it would fundamentally alter the nature of the program or service.

Fundamental Alteration: Part 2

A public entity is not required to take action if it would result in undue financial and administrative burdens.

- Look at resources of the agency as a whole.
- Still required to provide service to the maximum extent possible.

Reasonable Modification Examples

- Accepting state issued non-driver IDs;
- Allowing someone with a disability to participate in a meeting by telephone;
- Allowing a person with a disability who uses a Segway[®] as a mobility device to enter a building; and

Service Animals



Service Animals

- Codifies a variety of the Department's longstanding policies and interpretations regarding service animals.
- The Department's rules do not affect coverage of other animals under other laws, like the Fair Housing Act or Air Carrier Access Act.

Definition of Service Animal

“Service animal means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability... The work or tasks performed by a service animal must be *directly related* to the individual's disability...”

What does this mean?

- Limits the species of service animals to dogs;
- Makes clear that comfort or emotional support animals are not covered; and
- Makes clear that individuals with physical, sensory, psychiatric or other mental disabilities can use service animals.

Definition: Do Work or Perform Tasks

- Requires that the dog be *individually trained to do work or perform tasks*.
- The work or tasks performed by a service animal must be *directly related* to the individual's disability.

Definition: Do Work or Perform Tasks Continued

- Includes a non-exhaustive list of examples of work and tasks, such as retrieving items, e.g., medicine or telephone.
- Covers individuals with psychiatric, intellectual, or other mental disability that use service animals.

Example: Helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors.

Emotional Support Animals

- Because service animals must do work or perform tasks, emotional support and comfort animals *are not included* in the definition of service animal.
- The provision of emotional support, well-being, comfort, or companionship *do not constitute work or tasks* for the purposes of the service animal definition.

Exclusion of Service Animals

- General rule is that covered entities must permit service animals. The revised rules, however, add two specific exceptions for when service animals can be excluded:
 - The animal is out of control and the handler does not take effective action to control it; or
 - The animal is not housebroken.
- The handler should be given the opportunity to participate without the animal.

“Under Handler’s Control”

- Must have harness, leash, or other tether.
- If handler is unable to use these because of his or her disability or because use would interfere with the safe and effective performance of work or tasks, then the animal must otherwise be under the handler’s control (i.e., voice control, signals, or other effective means.)

Permissible Inquiries

- Only *two* inquiries may be made by covered entities:
 - Whether the animal is required because of a disability; and
 - What work or task the animal has been trained to perform.
 - Generally, inquiries may not be made when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability.

Miscellaneous Provisions

- Covered entities are not responsible for the care or supervision of a service animal.
- Service animals may accompany their handlers to areas of a public accommodation or public entity.
- Covered entities may not require people with disabilities to pay pet fees or surcharges that are not applicable to individuals without pets.



Beyond Service Animals

Miniature Horses

Miniature Horses

- Miniature Horses range in weight from 70 to 100 pounds.
- Miniature horses can range in height from 24 to 34 inches.

Assessment Factors

- The type, size, and weight of the horse and whether the facility can accommodate those features.
- Handler has sufficient control of the horse.
- Horse must be housebroken.
- Whether the horse's presence in a specific facility compromises legitimate safety requirements.

Other Requirements for Miniature Horses

- Sections 35.136(c)-(h)'s and § 36.302(c)(3)-(8)'s service animal requirements also apply to miniature horses.
- Admit person with a disability even if animal is properly excluded.
- Care and supervision.
- Inquiries.
- Access to all public areas.
- Surcharges.

Resources

Regulations, appendices, standards are available at DOJ's ADA web site at **www.ada.gov**.

For answers to specific questions, DOJ toll-free confidential ADA information line:

800-514-0301 (Voice)

800-514-0383 (TTY)

ADA National Network of Centers:

800-949-4232 (Voice/TTY)

www.adata.org